

you must file Form ADV-H at least ten business days before a filing is due. The Commission will grant or deny your application within ten business days after you file Form ADV-H.

(3) *Effective date—upon approval.* You are not exempt from the electronic filing requirements until and unless the Commission approves your application. If the Commission approves your application, you may submit your filings to NASD Regulation, Inc. in paper format for the period of time for which the exemption is granted.

(4) *Criteria for exemption.* Your application will be granted only if you are able to demonstrate that the electronic filing requirements of this chapter are prohibitively burdensome or expensive.

(5) *Small business.* You are a “small business” for purposes of this section if you are required to answer Item 12 of Form ADV (17 CFR 279.1) and checked “no” to each question in Item 12 that you were required to answer.

NOTE TO PARAGRAPH (b): NASDR will charge you an additional fee covering its cost to convert to electronic format a filing made in reliance on a continuing hardship exemption.

[65 FR 57449, Sept. 22, 2000; 65 FR 81738, Dec. 27, 2000]

§ 275.203(b)(3)-1 Definition of “client” of an investment adviser.

PRELIMINARY NOTE TO § 203(b)(3)-1 This rule is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of section 203(b)(3) of the Act.

(a) *General.* For purposes of section 203(b)(3) of the Act (15 U.S.C. 80b-3(b)(3)), the following are deemed a single client:

- (1) A natural person, and:
 - (i) Any minor child of the natural person;
 - (ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;
 - (iii) All accounts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries; and
 - (iv) All trusts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries;

(2)(i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(1)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a “legal organization”) that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an “owner”); and

(ii) Two or more legal organizations referred to in paragraph (a)(2)(i) of this section that have identical owners.

(b) *Special Rules.* For purposes of this section:

(1) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization, *Provided, however,* that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;

(2) An owner need not be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of or plans for the legal organization’s assets or similar matters;

(3) A limited partnership is a client of any general partner or other person acting as investment adviser to the partnership;

(4) Any person for whom an investment adviser provides investment advisory services without compensation need not be counted as a client; and

(5) An investment adviser that has its principal office and place of business outside of the United States must count only clients that are United States residents; an investment adviser that has its principal office and place of business in the United States must count all clients.

(c) *Holding Out.* Any investment adviser relying on this section shall not be deemed to be holding itself out generally to the public as an investment

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adviser, within the meaning of section 203(b)(3) of the Act (15 U.S.C. 80b-3(b)(3)), solely because such investment adviser participates in a non-public offering of interests in a limited partnership under the Securities Act of 1933.

[62 FR 28132, May 22, 1997]

§ 275.203A-1 Eligibility for SEC registration; switching to or from SEC registration.

(a) *Eligibility for SEC registration—(1) Threshold for SEC registration—\$30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment adviser statute, you are not required to register with the Commission, unless:

(i) You have assets under management of at least \$30,000,000, as reported on your Form ADV (17 CFR 279.1); or

(ii) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1).

(2) *Exemption for investment advisers having between \$25 and \$30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment adviser statute, you may register with the Commission if you have assets under management of at least \$25,000,000 but less than \$30,000,000, as reported on your Form ADV (17 CFR 279.1). This paragraph (a)(2) shall not apply if:

(i) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64); or

(ii) You are eligible for an exemption described in § 275.203A-2 of this chapter.

NOTE TO PARAGRAPHS (a)(1) AND (a)(2): Paragraphs (a)(1) and (a)(2) of this section together make SEC registration optional for certain investment advisers that have between \$25 and \$30 million of assets under management.

(b) *Switching to or from SEC registration—(1) State-registered advisers—switching to SEC registration.* If you are registered with a State securities authority, you must apply for registration with the Commission within 90 days of filing an annual updating amendment to your Form ADV report-

ing that you have at least \$30 million of assets under management.

(2) *SEC-registered advisers—switching to State registration.* If you are registered with the Commission and file an annual updating amendment to your Form ADV reporting that you no longer have \$25 million of assets under management (or are not otherwise eligible for SEC registration), you must file Form ADV-W (17 CFR 279.2) to withdraw your SEC registration within 180 days of your fiscal year end (unless you then have at least \$25 million of assets under management or are otherwise eligible for SEC registration). During this period while you are registered with both the Commission and one or more State securities authorities, the Investment Advisers Act of 1940 and applicable State law will apply to your advisory activities.

[65 FR 57449, Sept. 22, 2000]

§ 275.203A-2 Exemptions from prohibition on Commission registration.

The prohibition of section 203A(a) of the Act (15 U.S.C. 80b-3a(a)) does not apply to:

(a) *Nationally recognized statistical rating organizations.* An investment adviser that is a nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of § 240.15c3-1 of this chapter.

(b) *Pension Consultants.* (1) An investment adviser that is a “pension consultant,” as defined in this section, with respect to assets of plans having an aggregate value of at least \$50,000,000.

(2) An investment adviser is a pension consultant, for purposes of paragraph (b) of this section, if the investment adviser provides investment advice to:

(i) Any employee benefit plan described in section 3(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”) [29 U.S.C. 1002(3)];

(ii) Any governmental plan described in section 3(32) of ERISA (29 U.S.C. 1002(32)); or

(iii) Any church plan described in section 3(33) of ERISA (29 U.S.C. 1002(33)).

(3) In determining the aggregate value of assets of plans, include only